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October 3, 2012

by <http://www10.tceq.state.tx.us/epic/efilings/>

Texas Commission on Environmental Quality
Commission's Office of Chief Clerk (OCC)
ATTN: AGENDA DOCKET CLERK
P.O. Box 13087
Austin, TX 78711

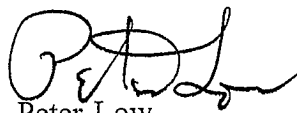
RE: TCEQ Docket No. 2012-1562-MIS-U

Dear TCEQ Officials:

Please find attached a brief in support of Newton County Appraisal District in the above-referenced TCEQ Docket No. related to Cottonwood Energy Company LP's appeal of the Executive Director's Use Determination regarding Applications 15505, 16410, 16411, and 16412. Also please find attached the Mailing List associated with the case; copies of Newton CAD's brief will be mailed on the same day they are filed in the OCC.

Thank you for your consideration of the attached brief, and please do not hesitate to call me if any questions arise.

Kindest Regards,



Peter Low

cc: Margie Herrin, Chief Appraiser
Newton CAD

Mailing List
Cottonwood Energy Company LP
TCEQ Docket No. 2012-1562-MIS-U

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TCEQ DOCKET NO. 2012-1562-MIS-U

RESPONSE BRIEF OF NEWTON COUNTY APPRAISAL DISTRICT TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)

October 3, 2012

APPELLANT: COTTONWOOD ENERGY COMPANY LP

USE DETERMINATION APPLICATIONS 15505, 16410, 16411, AND 16412

RESPONSE OF NEWTON COUNTY APPRAISAL DISTRICT TO APPELLANT'S REQUEST FOR COMMISSION CONSIDERATION OF NEGATIVE USE DETERMINATION

TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Newton County Appraisal District (NCAD) appreciates the opportunity to submit this brief, and would state the following in support of its argument that the negative use determination by the Executive Director of TCEQ is the correct decision in this case on the subject property. It should not be overturned.

NCAD also joins in the arguments presented by Pritchard & Abbott, Inc. on behalf of NCAD and other Texas appraisal districts.

I. Nature of the Property

The subject property consists of heat recovery steam generators (HRSGs) located at an electric generation plant. It is respectfully assumed that the persons to whom this brief is directed are more than familiar with the nature of these properties, and the arguments regarding whether they qualify as pollution control devices.

II. Summary of NCAD's Argument

A HRSG is often added to recover exhaust gases to preheat water entering the boiler of a conventional electric generating plant to improve efficiency. This has the primary effect of increasing profits, not reducing pollution; the amount of additional environmental benefit from adding HRSGs is typically negligible -- at best. NCAD contends that the HRSGs in this case were installed not for the benefit of reducing pollution, but rather to increase efficiency and production.

It is commercial production, not environmental benefit, that drives the use of HRSGs.

III. Standard of Review

What is often lost in the race for unauthorized exemption claims is Texas law. Article 8, §1-1 of the Texas Constitution, which authorizes pollution control exemptions, provides as follows in relevant part:

Property used for control of air, water or land pollution; exemption from ad valorem taxation

(a) The legislature by general law may exempt from ad valorem taxation all or part of real and personal property used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution.

(b) This section applies to real and personal property used as a facility, device, or method for the control of air, water, or land pollution that would otherwise be taxable for the first time on or after January 1, 1994.

In addition, the Texas Supreme Court has repeatedly noted that exemptions from taxation are not favored by the law and will not be favorably construed. See *North Alamo Water Supply Corp. v. Willacy CAD*, 804 S.W.2d 894, 899 (Tex. 1991). In that case the Court stated that:

Statutory exemptions from taxation are subject to strict construction because they undermine equality and uniformity by placing a greater burden on some taxpaying businesses and individuals rather than placing the burden on all taxpayers equally.

IV. Argument

It is NCAD's understanding that a HRSG is often added to improve efficiency. However, the HRSG is not the driving force behind the plant's production. A boiler which recovers the exhaust heat from the turbine engines is a major component of production. It was installed to produce more electricity or steam to sell and this function typically has little, if anything (and then only coincidentally), to do with reducing pollution. If a qualifying pollution control device is removed from property on which it was placed to control pollution, there should be little or no loss in production. But if the HRSG were to be removed from the subject generation power plant, production would be greatly reduced. Because removal of the HRSG significantly reduces the amount of electricity and/or steam produced, the HRSG is primarily production equipment and does not qualify for exemption as a pollution control device.

The primary reason for constructing the subject generation facility was profit -- not pollution control. The HRSG is a major component of profit-making production, and is not pollution control equipment. It is completely disingenuous to contend that the people of Texas intended that HRSGs be exempted from taxation when they voted to authorize a property tax exemption for property used for the control of air, water, or land pollution.

In construing Article 8, §1-1 strictly, as required by the Texas Supreme Court, it becomes clear that the HRSGs on the subject property are not used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution. The property is used for production and profit, not to control pollution. A contrary determination would constitute a construction so broad that virtually all property promoting efficiency could conceivably constitute "pollution control property." Such a construction was certainly not contemplated by the voters when the Constitutional amendment permitting pollution control exemptions was authorized.

V. Conclusion

The subject property was designed and installed to increase production and profit, not to reduce pollution. The property therefore does not qualify for a pollution control exemption, and NCAD respectfully requests that the negative use determination be upheld.

Respectfully submitted,

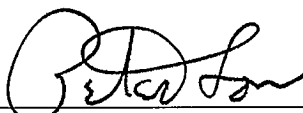


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ON BEHALF OF NEWTON
COUNTY APPRAISAL DISTRICT

CERTIFICATE OF SERVICE

This is to certify that on this 3rd day of October, 2012 a true and correct copy of the foregoing was forwarded by first class mail to all persons listed on the Mailing List attached to the TCEQ correspondence dated August 31, 2012, which informed Newton CAD of its right to file a response brief on or before October 4, 2012.



PETER WILLIAM LOW